

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 211/77

BEFORE: THE HON. PRESIDENT
THE HON. MR. JUSTICE HENRY, J.A.
THE HON. MR. JUSTICE KERR, J.A.

BETWEEN: STANLEY PARKINSON - APPLICANT
A N D : THE QUEEN - RESPONDENT

Mr. Roy A. Taylor and Mr. George Soutar for the Applicant.

Mr. Henderson Downer and Mr. Harold Gayle for the Crown.

February 27 and May 16, 1979.

KERR, J.A.

This was an application for leave to appeal to Her Majesty in Council from a decision of this Court (Kerr, J.A. - Presiding, Melville and Carberry JJ.A.) on the 1st December, 1978, allowing an appeal against a conviction for illegal possession of firearm in the High Court Division of the Gun Court, quashing the conviction and ordering a new trial. The application as stated therein was being made "pursuant to Sections 110(2)(a) and/or 110(2)(b) of the Constitution of Jamaica and Section 35 of the Judicature (Appellate Jurisdiction) Act."

After hearing Mr. Henderson Downer on a preliminary objection and Mr. Taylor in reply we refused the application but promised to put our reasons in writing for so doing.

The Preliminary Objection taken by Mr. Downer was to the

effect that by virtue of Section 14(3) of the Gun Court Act, the Court of Appeal was not competent to grant the leave sought by the applicant:-

- "Section 14 - (1)
- (2) Subject to subsection (1) a decision of the Court shall be subject to appeal in like manner and to the like extent -
- (a) in the case of any decision of a High Court or a Circuit Court Division of the Court, as such a decision by a Circuit Court.
- (b) in any other case, as such a decision by a Resident Magistrate's Court.
- (3) Except from a decision given by a Circuit Court Division of the Court, the decision of the Court of Appeal on any appeal under subsection (2) shall be final and conclusive.
- (4) Save with the leave of the Court of Appeal, no appeal shall lie to Her Majesty in Council in the case of any decision given by a Circuit Court Division of the Court."

Mr. Taylor in reply rested his submissions on three main grounds:-

- (1) That by virtue of Section 110(2)(a) jurisdiction was conferred on the Court of Appeal to grant leave in Criminal Proceedings and that Section 14(3) so far as it is inconsistent with Section 110(2)(a) is ultra vires.

Section 110(2):-

"An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court of Appeal in the following cases -

- (a) where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council, decisions in any civil proceedings; and
- (b) such other cases as may be prescribed by Parliament."

He further contended that the appeal involved a question of law of "great general or public importance" and that the words

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"decisions in civil proceedings" did not govern the whole paragraph but was no more than a category of cases for which an appeal would lie.

With that contention we unhesitatingly disagree. The interpretation of these provisions was considered by this Court in R. v George Green (1969) 11 J.L.R. p. 305. In that case the Court was asked to consider "whether the phrase 'decision in civil proceedings' governed the entire sub-paragraph or whether it was a separate category." In answer Waddington P. (Ag.) said at p. 306 --

"No authority apparently exists in respect of the interpretation of this paragraph of the Constitution in criminal proceedings, but the court is clearly of the view that the phrase "decisions in any civil proceedings" governs the previous words in the sub-paragraph and that the right to appeal under this sub-paragraph only lies in respect of civil proceedings. In the circumstances the court is of the view that it has no jurisdiction to grant the leave which is sought in this case. The application is therefore dismissed."

With that interpretation we entirely agree.

Secondly, Mr. Taylor then asked the Court to consider whether Section 14(3) so far as it altered the jurisdiction of the Court of Appeal and not having been passed by the special procedure as provided by Section 49(2) of the Constitution was not invalid as it altered the jurisdiction on the Court of Appeal which was conferred by an entrenched provision of the Constitution, namely Section 103.

Section 103 provides:-

- "(1) There shall be a Court of Appeal for Jamaica which shall have such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.
- (2) The Judges of the Court of Appeal shall be.....
- (3)
- (4)

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- (5) The Court of Appeal shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court."

Mr. Taylor conceded that if he is right that Section 14(3) is invalid as submitted then Section 35 of the Judicature (Appellate Jurisdiction) Act under which he is making his application is also invalid and that in that event the Court would have no jurisdiction thereunder to entertain his application.

We note that Section 110 which deals with appeals to Her Majesty in Council is not an entrenched provision and may be amended or rescinded by the ordinary procedure as provided by Section 49 (1) of the Constitution.

The Judicature (Appellate Jurisdiction) Act, came into force on the eve of Independence passed by the pre-Independence Parliament but was validated by the provisions of Section 4(1) of the Jamaica (Constitution) Order in Council 1962 which reads:-

"All laws which are in force in Jamaica immediately before the appointed day shall (subject to amendment or repeal by the authority having power to amend or repeal any such law) continue in force on and after that day, and all laws which have been made before that day but have not previously been brought into operation may (subject as aforesaid) be brought into force, in accordance with any provision in that behalf, on or after that day, but all such laws shall, subject to the provisions of this section, be construed, in relation to any period beginning on or after the appointed day, with such adaptations and modifications as may be necessary to bring them into conformity with the provisions of this Order."

In our view Section 103 of the Constitution contains provisions for -

- (1) The creation of the Court of Appeal.
- (2) Its establishment.
- (3) The sources of its jurisdiction and power.

The Jurisdiction and powers created and conferred by the Constitution can only be altered by changing the Constitution and by the methods authorised by the Constitution. The jurisdiction and powers conferred by any other law may be altered in the same manner and by the same authority by which it was conferred. We are fortified in this by a consideration of Sub-section 5 of the Section and the following interpretation of law in the Constitution.

" "Law" includes any instrument having the force of law and any unwritten rule of law....."

In our view the Judicature (Appellate Jurisdiction) Act and any Act which conferred jurisdiction and passed by the ordinary procedure, may be amended or altered in the same manner as passed.

Thirdly and in the alternative Mr. Taylor submitted that assuming that Section 35 of the Judicature (Appellate Jurisdiction) Act conferred jurisdiction on the Court to grant leave to appeal to Her Majesty in Council, Section 14(3) of the Gun Court Act should not be interpreted to remove the Court's jurisdiction to grant leave to appeal to Her Majesty in Council in relation to convictions in the High Court Division of the Gun Court but, that this Court should interpret the Section to read as if the words "or the High Court Division" were included after the words "Circuit Court" in the Section. He essayed to support his submission by an industrious review of the history of the Gun Court Legislation and the amendments which created the High Court Division to replace the "Full Court Division" which had been declared "ultra vires" by a majority decision of the Privy Council - Moses Hinds & Others v The Queen (1976) 2 W.L.R. 101.

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Section 35 of the Judicature (Appellate) Jurisdiction

Act provides:-

"The Director of Public Prosecutions, the prosecutor of the defendant may, with the leave of the Court appeal to Her Majesty in Council from any decision of the Court given by virtue of the provisions of Part IV, V or VI where in the opinion of the Court, the decision involves a point of law of exceptional public importance and it is desirable in the public interest that a further appeal should be brought."

These provisions came into being in 1970, by Act 12 of 1970, Section 7 and their validity were clearly assured by Section 110(2)(b) of the Constitution. The Gun Court Act was first passed in 1974 by Act 8 of 1974 and that Act was amended by Act 1 of 1976 as a result of the judgment in Hinds v The Queen (supra) and replaced the 'Full Court Division' which was declared to be unconstitutional.

There is no ambiguity or uncertainty in Section 14(3) of the Gun Court Act to necessitate resort to external aids for interpretation. It is clear from the express words that in the case of an appeal from the High Court Division of the Gun Court the decision of the Court of Appeal is "final and conclusive." Accordingly, this Court has no jurisdiction to entertain the application.

For the reasons set out herein we refused the application.

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